

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**NICHOLAS KNOPICK,**  
**Plaintiff**

**V.**

**PHILIP A. DOWNEY,**  
**Defendant**

**Civil No. 1: 09-CV-1287**

**Judge Sylvia H. Rambo**

## ORDER

Trial is less than a month away in this nearly five-year-old layered professional malpractice action. Presently before the court is Plaintiff's motion for voluntary dismissal, in which he requests that the court enter an order, pursuant to Federal Rule of Civil Procedure 41(a)(2), dismissing the case without prejudice and without costs or, in the alternative, with prejudice and without costs. (Doc. 187.) On April 11, 2014, Attorney Julie Negovan, acting on behalf of Plaintiff, filed a certificate containing the following statement of limited concurrence:

Defendant's counsel has advised me that Defendant does not oppose Plaintiff's request for a voluntary dismissal with prejudice, without costs. (Defendant does oppose Plaintiff's request for a voluntary dismissal without prejudice, without costs). Accordingly, Plaintiff requests that the Court enter his proposed Order requesting a voluntary dismissal **with prejudice** and without costs.

(Doc. 188 (emphasis in original).) Thus, there appears to be no objection to the alternative relief requested in Plaintiff's motion, *to wit*, for the court to enter an order dismissing the matter with prejudice and without costs. The court's understanding in this regard was confirmed during a conference call held on April 14, 2014, during which Plaintiff was represented by Attorneys Autry and Negovan, and Defendant was represented by Attorney Sink. Based on the representations of counsel, the court

understands that Defendant concurs that this case should be dismissed with prejudice and without costs taxed to either party but will not enter into a Rule 41(a)(1)(A)(ii) stipulation for dismissal and prefers that the court enter an order pursuant to Rule 41(a)(2). The court considers a dismissal with prejudice and without costs to be on just and proper terms. *See* Fed. R. Civ. P. 41(a)(2). Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's motion for voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2) (Doc. 187) is **GRANTED**. The matter is dismissed **WITH PREJUDICE** and **WITHOUT COSTS** awarded to either party.

Based on this court's ruling on the instant motion, **IT IS FURTHER ORDERED** that the second motion to withdraw, filed by Attorney Autry (Doc. 152) and duly authorized motion for summary judgment, filed by Defendant (Doc. 175) are each deemed **MOOT**. Furthermore, Plaintiff's obligation to respond to the court's April 3, 2014 rule to show cause (Doc. 174) is **DISCHARGED**. The April 17, 2014 pretrial conference is **CANCELLED**.

The Clerk of Court shall **CLOSE** the file.

s/Sylvia H. Rambo  
United States District Judge

Dated: April 14, 2014.